IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

WP(C).No. 13028 of 2007(A)

AGAINST THE ORDER DATED 29/03/2007 IN EA.72/07 IN EP.189/04 IN ARC.2157/2004 OF MUNSIFF COURT, THALIPARAMBA.

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PETITIONER/CLAIM PETITIONER:

THELAKKADAN HASSAN, S/O MOIDEEN,
HOUSE NO.95, WARD NO.VI OF PARIYARAM GRAMA PANCHAYATH, THALIPARAMBA TALUK, KANNUR DIST.

BY ADV. SRI.PROMY KAPRAKKATT,
SRI.SUNIL NAIR PALAKKAT,
SRI.K.N.ABHILASH,
SMT.P.K.BEENA.

RESPONDENTS/PETITIONER/RESPONDENTS:
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1. **PARIYARAM SERVICE CO-OPERATIVE BANK, REPRESENTED BY ITS SECRETARY, PARIYARAM, THALIPARAMBA, KANNUR.**

2. **K.V.GOMATHI, W/O NARAYANAN, PARIYARAM AMSOM, DESOM, THALIPARAMBA TALUK, KANNUR DIST.**

BY ADV. SRI.O.V.MANIPRASAD FOR R2,
SRI.D.KRISHNA PRASAD FOR R1,
SRI.D.NARENDRANATH,
SRI.M.HARISHARMA,
SMT.O.K.SANTHA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.13028/2007:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE JUDGMENT DTD. 07/10/2002 IN O.S. 525/2001 BY THE MUNSIFF'S COURT, THALIPARAMBA.

EXT.P.2: COPY OF THE DEED NO. 2872/03 OF THE SRO, THALIPARAMBA.

EXT.P.3: COPY OF THE APPLICATION DTD. 27/03/07 IN E.A. 72/07 IN E.P. 189/07 BEFORE THE MUNSIFF COURT, THALIPARAMBA.

EXT.P.4: COPY OF THE ORDER DTD. 29/03/07 IN E.A. NO. 72/07 IN E.P. 189/07 ON THE FILE OF MUNSIFF COURT, THALIPARAMBA.

RESPONDENT'S EXHIBIT:

EXT.R2.A: COPY OF THE EXECUTION PETITION FILED BY THE PETITIONER AS E.P. NO. 236/2003 BEFORE THE MUNSIFF'S COURT, TALIPARAMBA.

//TRUE COPY//

prv.

M.N.KRISHNAN, J

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W.P.(C) No. 13028 OF 2007

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Dated this the 6th day of June, 2007

JUDGMENT

This writ petition is filed seeking to quash the order passed in E.A.No.72 of 2007 in E.P.No.189 of 2004 in A..R.C.No.2157/2004 of the Munsiff's Court, Taliparamba. It is the case of the writ petitioner that there was an agreement between him and one Gomathy with respect to sale of 10 cents of property and since she did not execute the document he filed a suit for specific performance and by virtue of the execution of the decree she got an assignment deed executed by the court and thereafter took delivery of the property of 10 cents which includes a house and now the attempt of the decree holder in A.R.C. is to sell that house also. It is submitted that the total extent of the property is 31 3/8 cents out of which 10 cents of property with the house had been purchased by the claimant and so the house has to be necessarily excluded from the purview of the sale in the execution of the arbitration case.

2. On the other hand, learned counsel for the bank would submit that the judgment debtor had mortgaged the entire property of 31 3/8 cents of

property for raising loan and on failure to pay the loan amount the arbitration case was filed and it ended in a decree and therefore the bank is entitled to proceed against the entire 31 3/8 for realisation of the decree debt. But when the matter was pending in execution before the trial court, it was submitted that there has been a decree for specific performance and the property has been purchased by the present claim petitioner. As a matter of compromise or leniency it was decided first to proceed against 21 3/8 cents. According to the decree holder in the E.P. 21 3/8 cents had been sold in auction and it has been purchased by the auction purchaser and the sale is posted for confirmation. It is in the meantime the claim petitioner has come forward with a petition.

3. I have been taken through the document of title filed by the claimant as well as the execution petition filed by him for delivery of the property. In both the documents there is explicit statement to the effect that there are no structures in the property at all. Learned counsel for the claimant would contend that it is only a mistake, which was found out later and therefore he has instituted a suit before the competent Munsiff's Court and it is pending. As things stands on today, the document of title produced and as understood by the claimant would reveal that 10 cents of land purchased by him does not contain any structure. It is on that basis the

matter has to be proceeded with. Now an attempt to appoint a Commissioner to identify the property, etc. are only a device intended to protract the execution proceedings which is pending before court. The execution court has only considered the matter in the proper perspective and had arrived at a decision and had dismissed the claim application E.A.No.72 of 2007 and therefore it does not call for any interference. Secondly, it has also to be stated that a petition of this nature also would not lie against an order under Rule 58(1)(b) for the reason that there is specific provision provided under Order 21 Rule 58(5) to institute a suit. But I do not want to throw away the writ petition on technical ground so that I had considered the matter in detail. In the document executed by the court in favour of the claimant that there is no structure and an attempt to get a structure cannot be entertained.

The writ petition lacks merit and the same is dismissed.

M.N.KRISHNAN, JUDGE

Cdp/-